

New York State Education Department

October 2 - 6, 2006

Scope of Review: A team from the U.S. Department of Education's (ED) Office of English Language Acquisition, State Consolidated Grant Division, accompanied by representatives from the Office of the Chief Financial Officer and the Management Improvement Team conducted an on-site monitoring review of the New York State Education Department (NYSED) the week of October 2 - 6, 2006. This was a comprehensive review of NYSED's administration of the following program authorized by the No Child Left Behind (NCLB) Act: Title III, Part A.

In conducting this comprehensive review, the ED team carried out a number of major activities. The ED team analyzed evidence of implementation of the State's Title III accountability system, reviewed the effectiveness of the language instruction educational programs and professional development processes established by the State to benefit local educational agencies (LEAs), as well as district-level professional development implementation, and reviewed compliance with fiscal and administrative oversight activities required of the State educational agency (SEA). During the on-site review, the ED team visited three LEAs: New York City Public Schools, Yonkers City School District, and Syracuse City School District. The ED team interviewed administrative and teaching staff in each of the school districts.

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Previous Audit Findings: None

Previous Monitoring Findings: None. This was the first Title III monitoring visit.

Summary of Title III, Part A Monitoring Indicators

State Submissions			
Element Number	Description	Status	Page
Element 1.1	State Submissions: Follow-up on areas identified through desk audit and document reviews	Reviewed	8
Fiduciary			
Element 2.1	Reservation and Use of Funds: The SEA has a system in place that enables it to account for: (1) Funds reserved for State administration (2) Funds reserved to provide technical assistance and other State-level activities (3) Funds reserved for immigrant activities, and (4) Funds that become available for reallocation	Fiscal Report Forthcoming	8
Element 2.2	Allocations, Reallocations, and Carryover: The SEA complies with— <ul style="list-style-type: none"> • The procedures for Title III allocations outlined in Section 3114 • The procedures for allocating funds for immigrant children and youth programs as outlined in Section 3114(d) • The reallocation provisions in Section 3114(c) 	Fiscal Report Forthcoming	8
Element 2.3	Supplement not Supplant: The SEA ensures that Title III funds are used only to supplement or increase Federal, State, and local funds used for the education of participating children and not to supplant those funds	Fiscal Report Forthcoming	8
Element 2.4	Equipment and Real Property: The SEA ensures that equipment is procured at a cost that is recognized as reasonable and that the equipment is necessary for the performance of the Federal award. Title III funds may not be used to acquire real property	Fiscal Report Forthcoming	8
Element 2.5	Other Financial Management Issues	Fiscal Report Forthcoming	8

ELP Standards, Assessments and Accountability			
Element Number	Description	Status	Page
Element 3.1	English Language Proficiency (ELP) Standards: State English language proficiency standards have been developed, adopted, disseminated, and implemented	Reviewed	8
Element 3.2	ELP Assessments: ELP assessments have been administered to all LEP students in the State in grades K-12. Accountability through data collection has been implemented	Findings: Further Actions Required Recommendation	9
Element 3.3	New English Language Proficiency Assessment: Transition to new ELP assessment or revision of the current State ELP assessment	Not applicable	9
Element 3.4	Annual Measurable Achievement Objectives (AMAOs): AMAOs have been developed and AMAO determinations have been made for Title III-served LEAs	Findings: Further Actions Required Comment	9-10
Element 3.5	Data Collection: The State has established and implemented clear criteria for the administration, scoring, analysis, and reporting components of its ELP assessments, and has a system for monitoring and improving the ongoing quality of its assessment systems. Data system is in place to meet all Title III data requirements, including capacity to follow Title III-served students for two years after exiting; State approach to follow ELP progress and attainment over time, using cohort model	Findings: Further Actions Required	10-11

State Level Activities; LEA Authorized and Required Activities, Immigrant Children and Youth			
Element Number	Description	Status	Page
Element 4.1	<p>State Level Activities: Using administrative funds, the State carries out one or more activities that may include:</p> <ul style="list-style-type: none"> • Professional development • Planning, evaluation, administration and interagency coordination • Promoting parental and community participation • Providing recognition to subgrantees that have exceeded AMAO requirements 	<p>Reviewed</p> <p>Finding: Further Action Required</p>	11
Element 4.2	<p>Required Subgrantee Activities: The subgrantee is responsible for increasing the English proficiency of LEP students by providing high-quality language instructional programs and high-quality professional development to classroom teachers (including teachers in classroom settings that are not the settings of language instructional programs), principals, administrators, and other school or community-based organization personnel</p>	<p>Reviewed</p> <p>Commendation</p>	11-12
Element 4.3	<p>Authorized Subgrantee Activities: The LEA may use the funds by undertaking one or more authorized activities</p>	<p>Reviewed</p>	12
Element 4.4	<p>Activities by Agencies Experiencing Substantial Increases in Immigrant Children and Youth: The subgrantee receiving funds under Section 3114(d)(1) shall use the funds to pay for activities that provide enhanced instructional opportunities for immigrant children and youth</p>	<p>Finding: Further Action Required</p> <p>Recommendation</p>	12

State Review of Local Plans			
Element Number	Description	Status	Page
Element 5.1	Application: The SEA ensures that its LEAs comply with the provision for submitting an application to the SEA (Section 3116(a))	Reviewed	12
Element 5.2	Private School Participation: LEAs are complying with NCLB requirements regarding participation of LEP students and teachers in private schools under Title III	Reviewed	13
Element 5.3	Teacher English Fluency: Certification of teacher fluency requirement in English and any other language used for instruction (Section 3116(c))	Reviewed	13
State Monitoring of Subgrantees			
Element 6.1	Monitoring: The SEA conducts monitoring of its subgrantees sufficient to ensure compliance with Title III program requirements	Finding: Further Action Required	13
Parental Notification			
Element 7.1	Parental Notification: Provisions for identification and placement and for not meeting the AMAOs; notification in an understandable format as required under Section 3302	Reviewed Commendation	14

State Submissions

Element 1.1 - State Submissions

Reviewed: The New York State Education Department (NYSED) has submitted all reports required under Title III, Part A, and the Consolidated State Application to the U.S. Department of Education (ED). The ED team posed several follow-up questions regarding NYSED's March 6, 2006 Consolidated State Performance Report prior to and during the on-site review. NYSED provided some information in response to these questions; however, the SEA was unable to provide data for all requested areas. The unaddressed areas are listed under Elements 3.1 through 3.6.

Citation: Section 3123, 34 CFR 80.40

Fiduciary

Fiscal Report Forthcoming from ED's Office of the Chief Financial Officer

Element 2.1 – Reservation of Funds

Citation: Sections 3111, 3114(d), 3115, and 3116

Element 2.2 – Allocations, Reallocations, and Carryover

Citation: OMB A-87; EDGAR; 34 CFR 76.722; 34 CFR 80.4.

Element 2.3 – Supplement not Supplant

Citation: Section 3115(g); OMB Circular A-87 (Attachment A)

Element 2.4 – Equipment and Real Property

Citation: OMB A-87; EDGAR 76.533, 80.32

Element 2.5 – Other Financial Management Issues

ELP Standards, Assessments, and Accountability

Element 3.1 - ELP Standards

Reviewed: The State has made significant efforts to disseminate its NY State Learning Standards for English as a Second Language to all schools. The on-site review team observed the use of the standards at the school and classroom levels in multiple settings.

Citation: Sections 3113 and 3116

Element 3.2 - ELP Assessments

Finding: State guidance to LEAs regarding the use of multiple measures for LEP students to exit from language instruction educational programs was unclear. Some LEAs articulated that students could exit from programs for LEP students by taking the achievement assessment (grades 4,8, and Regents for high school) in lieu of the NYSESLAT. The USDE team observed some confusion on the part of LEAs as to whether it was a local decision or State policy to exempt a student from the oral component of the NYSESLAT if she/he had passed the Regents exam or scored at the proficient level on the achievement assessments in grades 4 or 8.

Further Action Required: NYSED must develop, disseminate, and ensure that LEAs uniformly implement State guidance regarding the multiple measures option for LEP students' exiting from language instruction educational programs. NYSED must also ensure that all LEP students in the State are annually assessed for English language proficiency in the required domains of speaking, listening, reading, and writing, and that a reading/language arts assessment is not substituted for an English language proficiency assessment.

Finding: The on-site review team observed different viewpoints in the State regarding whether all LEP students are assessed for identification purposes using the LAB-R. Some individuals indicated that an assessment might not be administered if the individual responsible for screening believes that a child's level of English proficiency is too low to provide any meaningful responses on the exam.

Further Action Required: NYSED must provide evidence of its process for ensuring that all students considered to be possibly LEP according to the Home Language Survey are fully assessed for English language proficiency.

Recommendation: LEAs reported that the timeline for LEA receipt of NYSESLAT scores should be shortened in order to facilitate timely placement of LEP students who are continuing their enrollment from the prior year into language instruction educational programs at the start of each school year. LEAs reported that scores are needed in June or July, but that they received them in the second week of September in 2006. LEAs also reported that, in prior years, they had received NYSESLAT data in late August. It is recommended that New York shorten the period of time it takes to report scores on the NYSESLAT to all LEAs.

Citation: Section 3113(b)(2) and (3)(D)

Element 3.3 – New English Language Proficiency Assessment

Not applicable

Element 3.4 – Annual Measurable Achievement Objectives

Finding: NY has not included more than 26,500 Title III-served LEP students in its annual measurable achievement objective (AMAO) determinations. The State did

provide some information regarding the reasons why these students were not included: invalid test administration; student only had one year of test data; student was absent or had medical excuse exempting him/her from participation; or parent/child refusal. However, New York has not provided a comprehensive explanation of the number of students who were not included in the AMAO determinations due to each of these reasons, or other reasons.

Further Action Required: New York must take steps to ensure that, from the 2006-2007 school year onwards, all Title III-served LEP students are included in the AMAO determinations. NYSED must provide a timeline and a plan documenting these steps. NYSED must also clearly identify the reasons for non-inclusion of students' scores in AMAO calculations and provide a breakdown, by reason, of the number of students whose scores were not included in the AMAO determinations for the 2004-2005 and 2005-2006 school years.

Finding: Title III staff, Title I staff, and assessment directors at some LEAs had very limited or no understanding of the Title III AMAOs, including status of their district, parts of the AMAOs, and consequences for not meeting Title III AMAOs.

Further Action Required: NYSED must provide a timeline and a plan for communicating information regarding AMAO determinations to Title III-served LEAs, including the three parts of the Title III AMAOs, consequences for not meeting AMAOs, State AMAO targets, and other information that the SEA deems to be relevant to LEAs' understanding of AMAOs.

Comment: Some LEAs expressed confusion regarding the implications of the recently issued Title I regulation that provides LEAs with greater flexibility in being able to exempt recently arrived LEP students from academic assessments, and in counting the scores of these students who do take these assessments for AYP purposes. A misperception has arisen that this rule does not provide greater flexibility in assessing recently arrived LEP students, but eliminates the flexibility in the ESEA that allows LEP students who have attended school in the US for less than three consecutive years to take reading language arts academic assessments in their native language. This misperception needs to be corrected so that LEAs properly understand all academic assessment requirements related to LEP students so that AYP for this subgroup can be properly calculated. LEP subgroup AYP is an element of the Title III AMAOs.

Citation: Sections 3122(a) and Section 1111(b)(2)(B)

Element 3.5 – Data Collection

Finding: NYSED did not provide English language proficiency (ELP) assessment data and AMAO analysis for LEP students in high school in the March 6, 2006 Consolidated State Performance Report.

Further Action Required: NYSED must submit evidence demonstrating how its new data system will enable the State to collect and report ELP assessment data and AMAO analysis for LEP students in high school beginning in the 2006-2007 year.

Finding: NYSED did not provide data in the March 6, 2006 Consolidated State Performance Report regarding the academic achievement status of former Title III-served LEP students for each of the two years after such students exit Title III-funded language instruction educational programs.

Further Action Required: NYSED must submit evidence demonstrating how its new data system will enable the State to collect and report data regarding the academic achievement status of LEP students for each of the two years after such students have exited language instruction educational programs, beginning in the 2006-2007 year.

Citation: Section 3113, 3121 and 3122

State Level Activities; LEA Authorized and Required Activities; Immigrant Children and Youth

Element 4.1 – State Level Activities

Reviewed: The Bilingual Education Technical Assistance Center (BETAC) network appears to be an effective means of providing technical assistance and disseminating information to districts and schools in the State. LEA representatives spoke about their collaboration with BETAC representatives in implementing programs for LEP students.

Finding: The coordinator and associates in the Office of Bilingual Education and Foreign Language Studies receive 100% of their salary from Title III funds, yet use their time to support both language instruction educational programs for LEP students and foreign language studies programs which serve non-LEP students.

Further Action Required: New York must ensure that its employees carefully document all personnel time allocations to guarantee that time charges for Title III are directly related to Title III work only. If an employee of a State only works part-time on a grant, for example, 50%, then no more than 50% of his/her salary can be charged to that grant. NYSED must provide ED with a copy of a documented procedure addressing this requirement, along with a copy of the transmittal document communicating the procedure to NYSED staff.

Citation: Section 3111 and 3122

Element 4.2 – Required Subgrantee Activities

Reviewed: LEAs and schools in the State demonstrated their understanding of both the two required activities and the authorized activities under Title III, and credited NYSED's Office of Bilingual Education staff in facilitating this understanding.

Commendation: Given its size and number of students, New York City Public Schools (NYCPS) appear to have developed a thorough system for ensuring compliance with Title III requirements. The City has clearly communicated critical information regarding Title III, such as the supplementary nature of the program, to regions, community school districts and schools. Representatives from the New York City Department of Education's Office of English Language Learners, the Regional Operating Centers (ROCs), Community School Districts (CSDs), and schools demonstrated understanding of the purpose and use of Title III funds.

Citation: Section 3115(c)

Element 4.3 – Authorized Subgrantee Activities

Commendation: Syracuse Public Schools has demonstrated foresight and commitment in funding, through its own resources, a coordinator for refugee and immigrant programs. The District has also established an extensive parent outreach service, actively partnering with parents to further the achievement of LEP students.

Citation: Section 3115(d)

Element 4.4 – Activities by Agencies Experiencing Substantial Increases in Immigrant Children and Youth

Finding: One LEA in the State expressed uncertainty regarding its eligibility for an immigrant subgrant.

Further action required: NYSED must ensure that it disseminates and uniformly applies written policies and procedures on what constitutes "significant increase" for distribution of its Title III immigrant children and youth program funds so that LEAs can make an informed decision on whether to apply for an immigrant subgrant under Section 3114(d).

Citation: Section 3114(d)

State Review of Local Plans

Element 5.1 – State Review of Local Plans

Reviewed: LEAs in the State described the Title III local plan development and application process. Overall, the Office of Bilingual Education and Foreign Language Studies at NYSED appears to have a thorough process in place for reviewing local plans and applications, although it is a lengthy one.

Citation: Section 3116(a)

Element 5.2 – Private School Participation

Reviewed: LEA representatives demonstrated understanding of the requirement to serve LEP students and their teachers in non-public schools in their LEAs, and had systems in place to document consultation with non-public school officials.

Citation: Section 9501

Element 5.3 – Teacher English Fluency

Reviewed: The State addresses this requirement through State teacher licensing requirements.

Citation: Section 3116(c)

State Monitoring of Subgrantees

Element 6.1 – State Monitoring of Subgrantees

Finding: NYSED's cycle for conducting desk monitoring and on-site monitoring of LEAs was unclear. NYSED did not utilize a standard uniform process to evaluate LEAs' compliance with Title III requirements as part of the NYSED coordinated monitoring process. The State also lacks a standard format for the Title III portion of the monitoring report.

Further Action Required: NYSED must provide evidence regarding the following aspects of its monitoring reviews of LEAs' implementation of Title III, Part A:

- 1) The cycle for conducting desk and on-site monitoring.
- 2) Its plan and timeline for developing a standard and uniform process for Title III on-site reviews, and
- 3) Its plan and timeline for developing a standard format for the Title III portion of the monitoring report.

OELA is aware that NYSED is in the process of improving its strategy for subrecipient monitoring across all its federal grants. ED supports NYSED's efforts to coordinate its monitoring of LEAs and to devise a risk-based approach to monitoring. NYSED may provide the above-requested information on monitoring for NCLB Title III programs as part of a more comprehensive monitoring plan.

Citation: Section 3113, 3122; and 34 CFR 80.40

Parental Notification

Element 7.1– Parental Notification and Participation

Reviewed: LEAs in the State demonstrated evidence of meeting Title III parental notification and outreach requirements. Specifically, LEAs reported developing their own materials or using the SEA template for parental notification letters regarding identification and placement of LEP students in language instruction educational programs.

Commendation: The USDE team reviewed many examples of evidence of parental outreach activities at the school, region, and district levels.

Citation: Section 3302(b)